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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

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No. ~~570 - 659~~ 40

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOCAL 825 INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF FOR ASSOCIATED BUILDERS AND CONTRACTORS, INC., AS AMICUS CURIAE

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BRIEF FOR ASSOCIATED BUILDERS AND CONTRACTORS, INC., AS AMICUS CURIAE

I. INTRODUCTION

This amicus curiae brief is submitted by the Associated Builders and Contractors, Inc. as provided in Rule 42(2) of the Rules of the Supreme Court, all petitioners and respondents having given their consent for the Associated Builders and Contractors to file as *amicus curiae.*

II. INTEREST OF ASSOCIATED BUILDERS AND CONTRACTORS, INC.

The Associated Builders and Contractors, Inc., herein at times called ABC, is a Maryland, non-profit association with headquarters near Baltimore, that has chapters in

18 states and represents approximately 3,200 members. Its membership consists of contractors, subcontractors and other business enterprises, such as suppliers, dealers and financial institutions who are involved in construction.

~~The Court has consolidated Cases No. 570 and 558,~~ but ABC limits its participation to the issue of No. 570 involving the interpretation of Section 8(b)(4)(B) of ~~the National Labor Relations Act.~~

Although this case results from a labor dispute involving two unions and three subcontractors with whom they have labor contracts or for whom their members are working, a vast number of secondary boycotts involve unions and subcontractors whose employees do not choose to belong to a union. Most of the subcontractor members of ABC do not operate under union contracts; thus, they and their employees are frequent victims of union secondary boycotts. ABC has noted that the views of the unorganized contractor are not represented in this case; thus, this brief presents the views of ABC members who are a sizeable segment of the construction industry.

III. QUESTION PRESENTED

Is a forced partial cessation of business or a disruption of business sufficient to violate the "cease doing business" prohibition of Section 8(b)(4)(B) of the National Labor Relations Act?

IV. SUMMARY OF FACTS

Burns and Roe, Inc., a general contractor, obtained a contract in September, 1964, to construct a $68 million nuclear power generating plant at Oyster Creek, N. J., for the Jersey Central Power and Light Co. Burns and Roe did no construction work but subcontracted all construction to three subcontractors all of whom employed

members of Local 825 of the Operating Engineers union. Two of the three subcontractors, the Chicago Bridge and Iron Company and the Poirier and McClane Corporation, had contracts with Local 825. The third subcontractor, the White Construction Company, did not have a contract with the engineers, but employed members of their local. White also employed members of the Iron Workers union.

The dispute and subsequent secondary boycott arose when White began its work on the project in September, 1965. The Engineers union demanded that White employ its members to push the start-and-stop button on electric welding machines it was using to weld structural steel. White had assigned this task to employees who were members of the Iron Workers. When White refused to accede to the Engineers' demands, the union insisted that both White and the general contractor, Burns and Roe, sign contracts giving it jurisdiction over all power equipment jobs. When they declined, the Engineers employed by the three subcontractors, White, Chicago Bridge, and Poirer left their jobs. Intermittent strikes followed, some involving all of the operating engineers on the project.

The NLRB trial examiner found a violation of Section 8(b)(4)(D) but not of Subsection (B). He was reversed by the Board on his finding on Subsection (B). The U. S. Court of Appeals for the 3rd Circuit overruled the Board, and, in effect, restored the trial examiner's decision, *NLRB* v. *Local 825 International Union Operating Engineers, et al.*, 410 F2d 5 (1969).

V. SUMMARY OF ARGUMENT

In its argument *Amicus* contends, contrary to the Third Circuit, that the phrase in Section 8(b)(4)(B) "doing business" should not be narrowly interpreted. In the light of the legislative history of the National Labor-Management Relations Act, and in the more than two decades of court and NLRB decisions, this type of dis-

ruption of a business relationship or even a partial discontinuance of business always has been considered a violation of Section 8(b)(4)(B).

To accept the new, novel and naive view of the Third Circuit would create a gaping "loophole" in the attempt by Congress in 1947 and again in 1959 to make illegal all secondary boycotts. It would mean judicial approval of hit-and-run secondary boycotts and work stoppages, and introduce a guerrilla-type labor-management warware. Union agents could legally coerce a key employee to stop work while other unionized employees would stand by claiming they were ready to continue "doing business". The subcontractor and his employees, whether claiming they were ready to continue "doing business" union or non-union, would have no relief from the on-and-off again "quickie" strike or boycott.

The Third Circuit Court of Appeals concedes its views might permit union action "however objectionable or deserving of condemnation" but says that this is again a problem for Congress. It is the view of *Amicus* that Congress already has prohibited union threats and coercion that lead to work stoppages against neutral parties. Acceptance of the Third Circuit's holding would be a distorted and erroneous interpretation of 20 years of *stare decisis* by other U.S. Circuit Courts of Appeal, and the National Labor Relations Board.

VI. ARGUMENT

1. Legislative History.

The 1947 amendments to the National Labor-Management Relations Act, 61 Stat. 136, 73 Stat. 519, 29 USC 151, contain 13 definitions in Section 2 but none on the term "doing business," indicating that the phrase was of such common understanding that no thought was given to a possible new interpretation 22 years hence. A review of the legislative history of the secondary boycott prohibi-

tions, especially Section 8(b)(4)(A) and (B), shows that the intent of Congress was to put an end to coercive pressure, threats, and work stoppages against secondary employers and employees. The often-quoted remarks of Senator Taft of April 29, 1947, in a colloquy with Senator Pepper covers this point. Senator Taft said:

> "It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our Committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different kinds of secondary boycotts. So we have so broadened the provision dealing with secondary boycotts as to make them an unfair labor practice."

The purpose of Section 8(b)(4) was to prevent the spread of labor disputes so as not to involve innocent third persons—employees or employers. This theme is found throughout the congressional debates, reports, and legislation. The purpose of Congress was to outlaw all secondary boycotts; even opponents to this broad purpose recognized it.

Rep. John F. Kennedy in his supplementary minority report No. 245 of the 80th Congress on H.R. 3020 wrote:

> ". . . The bill is seriously defective in that it fails to make a distinction between the various types of jurisdictional and sympathy strikes and secondary boycotts. The bill in broad terms condemns all of these as unlawful activities . . ."[1]

Senator Murray, who also opposed the Taft-Hartley bill, explained he and President Truman were opposed to secondary boycotts when used to further jurisdictional strikes, but that they would not oppose all secondary boycotts.[2] When President Truman later vetoed the bill,

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[1] Legislative History Labor Management Relations Act, 1947, page 428.

[2] Legislative History Labor Management Relations Act, 1947, page 1947; *Congressional Record* April 25, 1947, page 4155.

Senator Ball quoted from the President's veto message, saying the bill would permit "employers to halt every type of secondary boycott, not merely those for justifiable purposes".[3]

The President's veto made no mention of the objectives of secondary boycotts.

Senator Morse offered his own bill, S.858, as an alternative to Senator Taft's measure. In explaining it, he said it would create a union unfair labor practice to encourage "concerted refusal to . . . *perform any services*, in the course of their employment (A) because particular work tasks of such employer or any other employer are performed by employees who are or are not members of a particular labor organization."[4] (Emphasis supplied)

Senator Morse, an acknowledged expert on labor law, was not concerned with the objective to cease doing business but concerned about concerted refusals to perform any services.

A few moments earlier on the same day, Senator Morse declared:

> "Secondly, I have attempted to define as an unfair labor practice certain types of strikes, jurisdictional disputes, and secondary boycotts. . . . For example, it would be an unfair labor practice to strike or boycott in furtherance of a jurisdictional dispute regarding the performance of a particular dispute regarding the performance of a particular work task by members of one union or another."[5]

Nowhere is there a qualification that the secondary boycott is beyond the law if only a disruption in business

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[3] Legislative Hist. L-M. Relations Act, 1947, page 1640; *Congressional Record* June 23, 1947, page 7683.

[4] Leg. Hist. L-M Relations Act, 1947, p. 986; *Congressional Record* March 10, 1947, p. 1912.

[5] Leg. Hist. L-M Relations Act, 1947, p. 981; *Congressional Record* March 10, 1947, page 1910.

occurs, if less business occurs, or if a complete cessation of business is not achieved.

Senate Report No. 105 on S.1126, the Senate's bill to amend the law, is particularly significant because it specifically cites a type of secondary boycott example that would be made illegal. Explaining its anti-secondary boycott Section 8(b)(4) the report reads:

> "Under Paragraph (A) strikes or boycotts, or attempts to induce or encourage such action, are made violations of the act if the purpose is to force an employer or other person to cease using . . . the products of another, or to cease doing business with any other person. . . . This paragraph (A) also makes it an unfair labor practice for a union to engage in the type of secondary boycott that has been conducted in New York City by Local No. 3 of the IBEW, whereby electricians have refused to install electrical products of manufacturers employing electricians who are members of some labor organization other than Local No. 3." [6]

The significance here is that the IBEW Local No. 3 secondary boycott was not intended to make an electrical subcontractor in New York *stop doing all business* with a general contractor or another electrical subcontractor. Local No. 3's boycott was only to refuse to install certain electrical products brought onto the construction site. They would continue to do other work, but not perform the business of installing certain electrical equipment not assembled by their particular local. Thus the objective was one of a partial stoppage of business. The Senate in its report on the Taft bill clearly showed this type of work stoppage was to be outlawed.

The requirement that the secondary boycott prohibitions be construed broadly is also seen in House Minority Report No. 245 on H.R.3020 April 11, 1947. It points out:

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[6] Sen. Report 105, 80th Congress, 1st Session; Leg. Hist. L-M Relations Act, 1947, p. 428.

> "Section 2(14) *defines the term 'illegal boycott' in extremely broad terms,* to include any refusal to render services when an object of the refusal or threat is to force a person to do business or to cease doing business with another person . . ." (Emphasis supplied)

In the facts in this case before the Court, Local 825 of the Operating Engineers in New Jersey refused to render a service in order to force the general contractor to compel subcontractor White to do business or employ their union members rather than Iron Workers.

Amicus contends that the legislative history of both the 1947 and 1959 amendments to National Labor-Management Relations Act dealing with secondary boycotts clearly shows that narrow interpretations and construction such as applied by the Third Circuit herein were not intended by Congress.

The Supreme Court recognized this purpose in its first interpretation of the term "doing business" in its 1951 Denver Building Trades decision, *NLRB* v. *Denver Building & Construction Trades Council*, 341 U.S. 675 @ 692. This court explained that the purpose of Congress was to narrow the area of industrial conflict by shielding "unoffending employers and others from pressures in controversies not their own."

The language of the 1947 amendments follows:

> "Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> "(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:
>
> (A) forcing or requiring any employer or self-employed person to join any labor or employer or-

ganization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; . . . ."

The language of the 1959 amendments:

"Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

"(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is . . . . (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person. . . ."

2. Work Stoppages.

The facts brought out in the NLRB hearing in the instant case illustrate work stoppages against White and the Oyster Creek project to be of major proportions—running over a 2½ month period and including sabotage of equipment, physical force to prevent the operation of the electric welding machines, and the refusal to work on other construction tasks in an effort to shut down as much of the project as possible. To characterize the events as a mere disruption of business and hold that the objective was not to "stop doing business" illustrates a lack of construction site reality and experience in the techniques of organized labor to win their demands.

Testimony at the NLRB hearing revealed that crane operators who were members of Local 825 of the Operating Engineers left their posts September 30, but returned the following day. From October 7 to 11, they were off again. On November 4 and 5 Operating Engineers employed by White physically massed around the electric welding machines to prevent them their operation. On November 17 White's engineers quit again on the pretext that an insufficient number of employees were used to operate recently installed electric pumps. Evidence showed that the strikers admitted their work stoppage was because White was using the electric welding machines without an Operating Engineer union member to push the start-and-stop button. There was testimony that on November 17 the welding machines were damaged as a result of sabotage. The engineers remained off their jobs until December 21 and 22. Surely by any reasonable standard or interpretation such conduct fits within the meaning of not "doing business."

3. Legal Interpretations of "Doing Business".

Shortly after the 1947 amendments to the National Labor Relations Act establishing for the first time union unfair labor practices, the construction unions sought to create a "loophole" in the 8(b)(4) or the secondary boycott prohibitions around the phrase "doing business". Their theory was based on the contention that subcontractors and general contractors at a construction project were not independent business firms but were really allies; that they were not doing business with one another; therefore, no violation of the secondary boycott prohibitions of the 1947 amendments.

This "ally" theory was accepted by at least two federal district courts who found no secondary boycott violation. It was later rejected, however, by the U.S. Second Circuit and again by the Supreme Court in its Denver Building Trades opinion. Although the "doing business" argument

of the late 1940s is not the theory presented here, a District Court opinion offers an understanding of what is meant by "doing business" and how the phrase should be read.

In *Douds* v. *Metropolitan Federation of Architects*, (S.D.N.Y., 1948) 75 F. Supp. 672, District Judge Rifkind wrote:

> "It is my view that the words 'or to cease doing business with any other person' have reference to that which precedes it and must be construed in connection with the question of secondary boycott. It is simply another defense or a further spelling out of the defense of what is necessary to create a secondary boycott. . . . *It means 'doing business' as we ordinarily understand it between parties* other than those to the particular contract or their allies." (Emphasis supplied).

On page 676 the court explained further that, "It is the history of the secondary boycott, therefore, that attention should be directed and it is the light of that history that the term 'doing business' should be evaluated."

Professor Archibald Cox in his 1948 textbook "Cases on Labor Law" suggested that the words "cease doing business" should not be literally construed. The Third Circuit, however, seeks to reach such a literal construction in the case herein. Professor Cox on page 298 writes:

> "The context of the words 'cease doing business' and the meaning attributed to them by the legislative history of the Act, by the Board and by the courts, require that they be construed as condemning as an unfair labor practice a secondary boycott or strike . . . . Since it is clear the 'cease doing business' clause, when read with the clause preserving the right to strike except as specifically provided, is not to be literally construed, its bounds must be sought."

He continued, emphasizing that the phrase is to be applied only to secondary action instances and not to pri-

mary labor action which is outside the bounds of the secondary boycott prohibitions.

This same broad interpretation of the phrase "doing business" was acknowledged in what is believed to be the first appellate court interpretation of it. In *IBEW Local 501* v. *NLRB*, 181 F2d 34@37 (C.A.2, 1950) Chief Judge Learned Hand offered his explanation:

"*The phrase, 'doing business', would ordinarily cover doing any business which the third party is free to discontinue.* . . . The phrase, 'cease doing business', is general and admits of no such evasion." (Emphasis supplied).

When the ally doctrine defense based around "doing business" to sanction secondary boycotts involving general and subcontractors reached the Supreme Court in Denver Building Trades, the Court's majority speaking through Justice Burton, affirmed the fact that general and subcontractors are not allies:

"The Board (NLRB) found that the relationship between Doose and Lintner and Gould and Preissner was one of 'doing business', and we find no adequate reason for upsetting that conclusion." 341 U.S. 675@690.

The same contractor relationship in the Denver case exists among the contractors in this case, and the work stoppages in Denver were of a similar nature to those in this case. The Supreme Court found a "doing business" relationship in Denver and a similar finding should be made in this case.

4. Views of Other Circuits on "Doing Business".

The Third Circuit's two decisions (1964 and 1969) creating a "doing business loophole" in the prohibitions against secondary boycotts is the product of four jurists. The view of the Third Circuit that the language of the statute to stop doing business means a complete stoppage of all business and not a partial stopping is an extreme

minority view. Five other circuits and the Labor Board all have rejected this interpretation over a 19-year period.

An excellent example is the Ninth Circuit's decision, *Retail Fruit and Vegetable Clerks Union* v. *NLRB*, 249 F2d 591@595 (1957). The facts revealed that a secondary boycott resulted following a strike and lockout after negotiations broke down between the Retail Clerks union and the Retail Grocers Association of San Francisco. The Association bargained for J. M. Long & Co. which operated Crystal Palace Market. Long also operated a variety of shops in the market, including a grocery, and it rented other shop space to independent merchants. The union contended, in part, that Long and its lessees were not "doing business" with each other; therefore, no illegal secondary boycott. The Ninth Circuit disagreed. The union took the position that the only way the lessees could stop doing business with Long was to terminate their leases and move out. The union contended that this was not the object of their picketing. The Court disagreed and noted that the evidence showed that the union also disrupted business between the lessees and their suppliers:

> "Officials of Local 1017 warned some operators of fruit and vegetable stands before the beginning of picketing to 'buy light' to protect themselves, or, so the Board contends, to reduce the amount of their business with the suppliers. . . ."

The Court found disruption of the business between the lessees and their suppliers and the disruption of business among the lessor and his lessees was sufficient to be considered within the stop doing business phrase of the statute. To be certain it was clear, the Ninth Circuit cited Judge Hand's 1950 Second Circuit opinion in *IBEW Local 501* v. *NLRB, supra:*

> "The phrase 'doing business', *would ordinarily cover doing any business* which the third party is free to

discontinue . . . The phrase 'cease doing business' is general. . . ." (Emphasis supplied).

Significance can be placed on the Fifth Circuit's 1969 decision involving general contractors and subcontractors victims of a construction site secondary boycott, *NLRB* v. *Carpenters District Council of New Orleans and Vicinity*, 407 F2d 804. The opinion was written by Judge Homer Thornberry, who was a member of Congress in 1959 when amendments to the National Labor-Management Relations Act were passed. The facts revealed that the Delta Painting Company was a painting subcontractor on the project under the general contractor, Southern Builders Inc. Delta cut six carpenters from its staff and the Carpenters union then ordered the remaining carpenters to strike. Delta then cancelled its contract with the Carpenters Union and employed union lathers to do its work. The Carpenters union then induced carpenters employed by Southern, the general contractor, to stop working. The object to force Southern to pressure Delta to rehire the carpenters. A similar situation exists in the present case because the Operating Engineers induced its members to stop working for Burns & Roe, the general contractor, and the two subcontractors, Chicago Bridge and Poirier and McClane to force White to hire push-button Operating Engineers for the welding machines.

Judge Thornberry and the Fifth Circuit reached this conclusion:

> "This case presents a classic example of secondary coercion . . . One of the union's defenses is that secondary pressure is not prohibited by the statute unless an object thereof is to force the neutral to cease doing business with the primary employer. The union argues that it never suggested to Southern that it should cease doing business with Delta and had no desire for this to happen; it simply wanted Southern to influence Delta to rehire carpenters. . . . While the statute by its literal terms does not require that

> an object of illegal secondary pressure be to force a neutral to cease doing business with a primary employer, the Board has said, and we agree, *that the objective causing a serious disruption of an existing business relationship, even though something less than a total cancellation of the business connection, is within the intendment of the statute.*" (Emphasis supplied)

A series of three additional cases from the Second Circuit from 1960 through 1965 all follow the interpretation that a partial interference with the business of the neutral third party to a labor dispute is sufficient to constitute a cessation of doing business; thus such partial interference violates the statute. Brief summaries follow:

NLRB v. *Local 294 International Brotherhood of Teamsters*, (1960), 273 F2d 696@698. The Teamsters by secondary boycott pressure sought to prevent the Industrial Molasses Corp. from employing the Bonded Trucking Co. to handle its seasonal overload of work. Bonded's drivers belonged to an independent union. The manufacturer complied and agreed to use a Teamster-organized carrier, Leaman Transportation Corp., for its overload. But when Leaman could not handle all of the extra work, the manufacturer again called on Bonded. The Teamsters' defense was that it was not stopping the manufacturer from doing all business with Bonded, just a portion of the business. The Court held:

> "Nor is it a defense to argue that Bonded received some business when Leaman could not handle all of the overflow work because complete elimination of the company under attack is not necessary."

NLRB v. *Milk Drivers & Dairy Employees Local No. 584* (1965), 341 F2d 29. The union objected to the Old Dutch Dairy Co., a member of a multi-employer bargaining unit of milk processors, opening a retail outlet. It picketed Balsam Farms, Inc., a bottler of Old Dutch's milk in order to pressure Old Dutch to close its retail

store. Although its objective was a limited one, and the union did not seek to compel Balsam Farms from stopping all business with Old Dutch, the Court found its limited objective illegal. It noted at page 12: ". . . the *object of every secondary boycott is really to cause a cessation of business* between two independent companies. . . ." (Emphasis supplied)

In *NLRB* v. *Electrical Workers, IBEW (New York Telephone Co.)* (1963), 325 F2d 561, the Second Circuit upheld the NLRB's conclusion that: "The objective of causing such a disruption of an existing business relationship, even though something less than a total cancellation of the business connection, is a 'cease doing business' object within the meaning of Section 8(b)(4)(B) of the Act."

In a 1963 decision by the Court of Appeals for the District of Columbia, the Labor Board again was upheld on the point that a partial stoppage of business is sufficient to activate the secondary boycott prohibition of the act. In this case the New York Mailers union sought to pressure three newspapers not to handle Sunday supplements enclosed with their regular Sunday editions, because the supplements were printed by a New Jersey printing company against whom the union had called a strike. *New York Mailers Union No. 6, ITU* v. *NLRB*, 316 F2d 371.

A Seventh Circuit decision of 1964 also supports the majority view that a complete cessation of business is not necessary before the act will come to the aid of secondary boycott victims. In *NLRB* v. *Milk Wagon Drivers, Local 753, IBT*, 335 F2d 326. A Chicago Teamsters Local 753 objected to Sidney Wanzer & Sons, a Chicago dairy, receiving milk from the Pure Milk Association in Wisconsin by Quality Carriers, a trucking concern whose employees belonged to a rival Teamster local. Wanzer previously used a Chicago carrier, employing eight members of Local 753 to bring its milk to Chicago, but terminated

the carrier's contract. The Seventh Circuit affirmed the NLRB finding that to accede to the union's demands would be forcing Wanzer to disrupt, to cease, a business relationship with PMA; that such a disruption would be necessary because of the union's demands. The Court displayed an experienced practical understanding of such union activities and objectives, pointing out that:

> "It follows that we must disagree with the union's contention that it has not committed an unfair labor practice because it was not asking Wanzer to cease doing business with anybody, not asking Wanzer to buy milk from anybody but PMA at any time, but only asking Wanzer to live up to its agreement. . . ."
>
> "There is no merit therefore in the uinon's contentions that it was unconcerned about Wanzer's business with PMA, that its objective was the lawful one of keeping its members in jobs, and that it was only trying to have Wanzer perform its obligation . . ."

An "in point" NLRB decision on the partial disruption of business being sufficient to find an 8(b)(4) violation is *International Ladies Garment Workers Union, Local 102, and Henry Rosenfeld, Inc. et al*, 144 NLRB No. 95; 63-2 CCH NLRB 19,964. The union applied secondary boycott pressure against a dress manufacturer to compel the manufacturer to rehire four truck drivers who lost their jobs when the dress manufacturer transferred shipping operations from New York to New Jersey. The B&Z Trucking Company handled the normal trucking of the New Jersey plant's operations, but with the transfer it also took over the former New York trucking that had been handled by the Ideal Trucking Co. The union sought only to compel B&Z to stop handling the business that its four New York drivers had. It had not want to force the manufacturer to stop all business with B&Z. The NLRB found this was demand for a partial cessation of business, but held:

"That only a partial cessation of business with B&Z was sought is immaterial for, as the Court of Appeals for the Second Circuit observed in a closely analogous situation, 'Complete elimination of the company under attack is not necessary.'" (Citing *NLRB* v. *Local 294, IBT*, 273 F2d 696).

5. Third Circuit's Minority View

The Third Circuit's first departure from the long series of decisions holding that a partial cessation of business constitutes a "stop doing business" came in 1964 in *NLRB* v. *Local 825 International Union of Operating Engineers*, 326 F2d 218, the same union in the present case. The union's secondary pressure was against a subcontractor to prevent electricians from operating power augers and winches. The Third Circuit took the view that the work stoppage was merely an incidental consequence of efforts of the Engineers union to prevent electricians from operating power equipment and to compel the subcontractor to assign the work to their union. The Court found that, "In order to do this they had to leave their jobs, but this does not mean that in doing so they sought to compel their employers to cease doing business with Nichols."

Such conclusion is a naive understanding of the objectives of secondary boycott coercion. In taking the same view again five years later in the present case against 20 years of authorities, the Third Circuit perpetuates its error.

Extended to other fields of law, a robbery would not be committed unless the gunman relieved his victim of all of his money, not merely a portion of it. Arson could not be found unless the fire caused the complete destruction of a building rather than a portion.

VI. CONCLUSION

Amicus respectfully submits to this Court that the decision of the Court of Appeals, if permitted to stand, would overturn the intent and purpose of Congress to

narrow the scope of labor disputes so as not to involve neutral third parties. The Third Circuit's view would bring an end to effective protection against union secondary boycotts and thereby thwart the intent of Congress. It also would bring to an end 20 years of Board and Court decisions forming an understanding of the phrase "doing business." In doing so, it would give a completely new labor law meaning to "doing business."

Amicus also submits to this Court that a reversal of the Third Circuit's holding would not leave unions without recourse in protecting themselves against employer unfair labor practices or in taking action to win labor disputes. A reversal would merely maintain the status quo, withdrawing (as Congress intended) secondary boycott power from the officials of organized labor.

Amicus asks that the Court reverse the Court of Appeals, and rule that under the facts of this case the conduct of the union was a violation of Section 8(b)(4)(B) of the Act; and that the case be remanded with directions to enter judgment accordingly.

Respectfully submitted,

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